

**RESOLUTION NO. 16-1 (HA)**

**A RESOLUTION OF THE CITY OF SANTA CLARA  
HOUSING AUTHORITY TO EXECUTE AGREEMENT TO  
AMEND POST CLOSING COVENANTS AND  
MODIFICATION OF GRANT DEED WITH THE STATE OF  
CALIFORNIA FOR APPROXIMATELY 6 ACRES OF LAND  
LOCATED AT 90 N. WINCHESTER BOULEVARD, SANTA  
CLARA, CALIFORNIA (APN: 303-17-053)**

**BE IT RESOLVED BY THE CITY OF SANTA CLARA HOUSING AUTHORITY AS  
FOLLOWS:**

**WHEREAS**, the State of California (“**State**”) and Authority’s predecessor-in-interest entered into that certain Purchase and Sale Agreement dated July 5, 2005, as amended by that certain First Amendment to Purchase and Sale Agreement dated December 13, 2011 (collectively the “**Purchase Agreement**”), related to approximately 6 acres of land located at 90 N. Winchester Boulevard, Santa Clara, California (APN: 303-17-053) (the “**Seniors’ Property**”).

**WHEREAS**, in accordance with the terms of the Purchase Agreement, the Seniors’ Property was to be developed for approximately 165 units of affordable housing for low or moderate-income housing for senior citizens (the “**Seniors’ Project**”).

**WHEREAS**, upon receiving entitlements from the City of Santa Clara (“**City**”) to develop the Seniors’ Project, and in accordance with the terms of the Purchase Agreement, State conveyed the Seniors’ Property to Authority pursuant to that certain Grant Deed dated as of December 21, 2011, and recorded in the Official Records of the Santa Clara County Recorder on January 5, 2012, as Document No. 21485774 (the “**Grant Deed**”) as surplus property pursuant to the provisions of Chapter 631 of the Statutes of 2002, Section 1, and in accordance with California Government Code § 11011.1 et seq.

**WHEREAS**, the Purchase Price of the Seniors' Property was a discounted value from market value in order to provide for the affordable housing in accordance with California Government Code Section § 11011.1 et seq.

**WHEREAS**, as required by Government Code § 11011.1 et seq., the Purchase Agreement and the Grant Deed contained certain post-closing covenants to ensure, among other things, that the Seniors' Project would be developed on the Seniors' Property as intended (the "**Post-Closing Covenants**"). The Post Closing Covenants survived the Close of Escrow and required commencement of such development by January 5, 2017.

**WHEREAS**, it is in the best interests of the Authority to amend the Post-Closing Covenants in order to proceed with a project that is different than the original Seniors' Project; specifically a master planned community project on the Seniors' Property (the "**Proposed Master Development**") that is expected to include an open space component of no less than one (1) acre (the "**Open Space Element**"), residential units at market rate (collectively, the "**Market-Rate Housing Element**"), and a minimum of 165 affordable units to persons of extremely low, very low, or low or moderate income, which will be age-restricted to seniors. (collectively, the "**Affordable Housing Element**").

**WHEREAS**, The State is prepared to enter into an Agreement to Amend Post Closing Covenants ("**Agreement to Amend**") and a Modification of Grant Deed ("**Deed Modification**") to amend the Post-Closing Covenants as aforesaid and to make necessary changes in the Grant Deed to the Seniors' Property.

**WHEREAS**, pursuant to the Agreement to Amend, the Proposed Master Development is subject to review and approval by the City pursuant to its zoning, planning, building, subdivision and environmental oversight. Any requisite City approvals of this Agreement shall not be deemed approval of the Proposed Master Development.

**WHEREAS**, the Agreement to Amend and the amendments contemplated therein to the Post-Closing Covenants are authorized by the provisions of Chapter 649 of the Statutes of 2016 (the “**Authorizing Legislation**”).

**WHEREAS**, in accordance with the Authorizing Legislation, and as a condition to State entering into the Agreement to Amend, the Authority is required to pay the State the sum of FOUR MILLION FIFTY THOUSAND AND NO/100THS DOLLARS (\$4,050,000.00), as consideration for State agreeing to amend the Post-Closing Covenants to allow the Authority to proceed with the Proposed Master Development instead of the Seniors’ Project (the “**Consideration**”), calculated as the difference between the discounted price paid by the Authority for the Seniors’ Property in order to develop the Seniors’ Project pursuant to the Purchase Agreement, and the fair market value for the Seniors’ Property based upon the Authority developing the Proposed Master Development on the Seniors’ Property.

**WHEREAS**, in accordance with the Authorizing Legislation, and as a condition to State entering into the Agreement to Amend, the City shall be solely responsible for compliance with the California Environmental Quality Act (“**CEQA**”).

**WHEREAS**, in accordance with the Authorizing Legislation, and as a condition to State entering into the Agreement to Amend, the City shall indemnify, defend, and hold harmless the State from any and all claims, damages, or liabilities arising out of, in connection with, or directly or indirectly resulting from the Agreement to Amend, as more specifically set forth below in the Agreement to Amend.

//

//

//



**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA  
HOUSING AUTHORITY AS FOLLOWS:**

1. That the Authority hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the Authority hereby authorizes the Executive Director for Housing Authority to execute the Agreement to Amend Post Closing Covenants (the “**Agreement to Amend**”) and the Modification of Grant Deed (the “**Deed Modification**”) with the State of California, and to make minor, non-substantive modifications subject to City Attorney review.
3. That the Authority approves the establishment of the Capital Improvement Project 6554 – 90 N. Winchester Boulevard.
4. That the Authority approves the appropriation of \$4,050,000 from Land Sale Reserve account (063-44459) to new Capital Improvement Project account (539-1013-80200-6554).
5. That the Executive Director for Housing Authority or his designee is hereby authorized to execute documents and take further action as may be necessary or appropriate to close escrow and to carry out the Authority’s obligations pursuant to the Agreement to Amend and the Deed Modification.
6. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara Housing Authority hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

//

7. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA HOUSING AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE 13<sup>TH</sup> DAY OF DECEMBER, 2016, BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	Caserta, Davis, Kolstad, Mahan, O'Neill and Watanabe and Mayor Gillmor
NOES:	COMMISSIONERS:	None
ABSENT:	COMMISSIONERS:	None
ABSTAINED:	COMMISSIONERS:	None

ATTEST:

*Bernadette De Sousa*  
*for* ROD DIRIDON, JR.  
CLERK  
CITY OF SANTA CLARA HOUSING AUTHORITY

Attachments incorporated by reference: None  
S:\Attorney\RESOLUTIONS\Form Resolution - HA.doc